Supreme Court, U.S.
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No. 95-1463

In The

Supreme Court of the United States

October Term, 1995

HARRY E. THOMASON, ESQ.,

Petitioner,

v.

PRINCE GEORGE'S COUNTY, MARYLAND

Respondent.

On Petition for Writ of Certiorari to the
Court of Special Appeals of Maryland

RESPONDENT'S BRIEF IN OPPOSITION

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11 pp

QUESTIONS PRESENTED

1. Whether the Maryland Court of Appeals erred in failing to grant certiorari and remand the cause for trial on the issues of discriminatory denial of the guarantees of the United States Constitution of equal protection of the laws and unlawful administrative search in violation of the Fourth and Fourteenth Amendments to the United States Constitution.

2. Whether the ordinance adopted by Prince George's County, Maryland (CB-64-1993) violates the safeguards of the Fourth and Fourteenth Amendments to the Constitution of the United States.

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STATEMENT OF THE CASE

On September 7, 1993, the Prince George's County Council, sitting as the District Council enacted Council Bill 64-1993 ("CB-64-1993"). CB-64-1993 required those who rent or lease single family homes to first obtain a license from the Prince George's County Department of Environmental Resources.

On December 17, 1993, the Petitioner filed a Complaint in the Circuit Court for Prince George's County, Maryland, alleging that CB-64-1993 violated the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. This Complaint was later amended to allege violations of the Fourth Amendment of the United States Constitution's ban on unlawful searches. Respondent, Prince George's County, Maryland, (the "County") filed a motion to dismiss asserting Petitioner's failure to show the absence of a rational basis for the legislation. The motion was ultimately granted.

The circuit court's decision was appealed to the Maryland Court of Special Appeals, which issued an unreported opinion affirming the grant of the motion to dismiss. The Maryland Court of Appeals denied a request for a writ of certiorari finding "no showing that review by certiorari is desirable and in the public interest." (Apx.-1)

REASONS FOR DENYING THE WRIT

1. The provisions of CB-64-1994 are in harmony with the decisions of this Court.

Although the Petitioner boldly asserts that CB-64-1993 is invalid because it discriminates against some citizens, and results in an invasion of privacy, concealment, lack of equal protection under the

law, and lack of due process of law (Petition pp 9-10), the essence of his argument is that CB-64-1993 is violative of the Fourth Amendment's prohibition against unreasonable searches and seizures, and therefore conflicts with this Court's holdings in Camara v. Municipal Court, 387 U.S. 523, 87 S.Ct. 1727 (1967), and See v. City of Seattle, 387 U.S. 541, 87 S.Ct. 1737 (1967).[1] This contention is without merit.

In Camara, this Court reviewed the legality of a housing code ordinance which imposed a criminal penalty for refusing a warrantless inspection of one's residence. The challenged law was found to be violative of the Fourth Amendment's prohibition against unreasonable searches for the following reason:

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[1]Moreover, the only constitutional provision set forth in the Petition is the Fourteenth Amendment of the United States Constitution. Thus, this Court should conclude, pursuant to Supreme Court Rule 14, that this is the only provision at issue.

> [O]nly by refusing entry and risking a criminal conviction can the occupant at present challenge the inspector's decision to search. And even if the occupant possesses sufficient fortitude to take this risk . . ., he may never learn any more about the reason for the inspection than that the law generally allows housing inspectors to gain entry. The practical effect of this system is to leave the occupant subject to the discretion of the official in the field . . . . [S]uch searches when authorized and conducted without a warrant procedure lack the traditional safeguards which the Fourth Amendment guarantees to the individual . . . .

Id. at 532, 534, 87 S.Ct. at 1733. However, this Court did not find periodic inspections for compliance with minimum code standards to be an illegal exercise of the police power. *Id.* at 535-540, 87 S.Ct. at 1734-1736. Moreover, it was noted that "most citizens allow inspections of their property without a warrant . . . and it seems likely that warrants should normally be sought only after entry is refused unless there has been a citizen complaint or there is other satisfactory reason for securing immediate entry." *Id.* at 539-540; 87 S.Ct. at 1736. In See v. City of Seattle, 387 U.S. 541, 544, 87 S.Ct. 1737, 1740 (1967), this Court similarly ruled that a city may not enact an ordinance which allows warrantless entries upon commercial premises to ascertain compliance with fire code provisions. However, once again, the right to inspect and license such premises

was upheld. *Id.* at 545-546, 87 S.Ct. 1740-1741.

Clearly, the challenged legislation meets the legal mandates set forth in Camara and See. By its express terms, CB-64-1993 only requires those who lease or rent single-family dwellings to first obtain a license. No license is granted until the premises meet the minimum standards of the Code. (Apx.-16.) Nothing in the law suggests that unauthorized entries to ascertain code compliance will be permitted. Indeed, in a hearing before the circuit court for Prince George's County, Maryland, the County reiterated that it would seek an administrative warrant if entry was not voluntarily granted. (Apx.-43.)

Petitioner does not, and cannot, assert that CB-64-1993 is not a valid exercise of the County's police power. Given this validity and the absence of any support for his contention that the legislation allows a warrantless entry upon private property, the Petition for Certiorari should be denied.

2. The provisions of CB-64-1994 are not violative of the Equal Protection Clause.

As further support for his Petition, Mr. Thomason asserts that CB-64-1993 is unconstitutional because it violates the equal protection

clause of the Fourteenth Amendment of the United States Constititution. As noted by the Maryland Court of Special Appeals, Petitioner does not allege that CB-64-1993 "burdens a 'suspect class' or impinges on a 'fundamental right'". (Apx-6.) Accordingly, the law need not be subjected to close judicial scrutiny, or heightened scrutiny, but may be evaluated under the rational basis test. *See*, Graham v. Richardson, 403 U.S. 365, 91 S.Ct. 1848 (1971).

Under a rational basis analysis, the challenged legislation is not violative of the equal protection clause. The law furthers the legitimate governmental purpose of ensuring that all residential rental properties, single as well as multi-family dwellings, adhere to County safety standards. All landlords who rent or lease single family residences commercially are treated equally.[2] Accordingly, Petitioner should not be granted a Writ of Certiorari on these grounds.

3. There is no important public issue raised in the Petition.

Pursuant to Supreme Court Rule 10, "[a] petition for writ of certiorari will be granted only when there are special and important reasons therefor." *See, also* National Labor Relations Board v.

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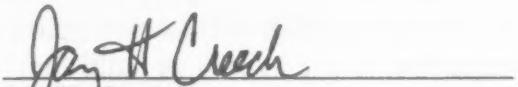
[2]Exceptions noted within CB-64-1993 include the exclusion of inspections for single-family dwellings located within incorporated municipalities as a result of a similar procedure currently in place within these areas, as well as intrafamilial and short term rentals.

Pittsburgh S.S. Co., 340 U.S. 498, 71 S.Ct. 453 (1951); Rice v. Sioux City Memorial Park Cemetery, Inc., 349 U.S. 70, 75 S.Ct. 614 (1955). The instant Petition is merely a recapitulation of why Petitioner believes his position to be correct and does not set forth any special or important bases for this Court to issue the Writ.

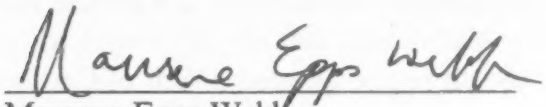
CONCLUSION

For the reasons set forth above, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,



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